TETUAN KUMAR JASPAL QUAH & AISHAH A

v.

FAR LEGION SDN BHD & ANOR

COURT OF APPEAL, PUTRAJAYA B
MOHD GHAZALI YUSOFF JCA
SURIYADI HALIM OMAR JCA
HASAN LAH JCA
[CIVIL APPEAL NO: W-02-65-2003]
26 MARCH 2007 C

LEGAL PROFESSION: *Practice of law - Practice and etiquette - Application to disqualify advocates and solicitors from acting in matter in which it had pecuniary interest - Whether said advocates contravened r. 27(a) Legal Profession (Practice and Etiquette) Rules 1978* D

STATUTORY INTERPRETATION: *Construction of statutes - Purposive approach - Proper definition and meaning of r. 27(a) Legal Profession (Practice and Etiquette) Rules 1978 - Whether literal interpretation would result in an absurd result* E

This was an appeal by the appellant, a firm of advocates and solicitors, against the High Court's decision rejecting the appellant's application to disqualify one Messrs Chellam Wong, also a firm of advocates and solicitors, from acting in a matter in which it had a pecuniary interest. The appellant had initially F represented the respondents in a civil suit, and the respondents had agreed to an interim professional fee of RM300,000 to the appellant for that legal representation. A final note dated 4 April 1997 to pay a professional fee of RM320,868.60 was issued later to the appellant. Due to bad blood subsequently flowing between G the appellant and the respondents, Messrs Chellam Wong represented the respondents in that suit. The appellant, although unhappy with its substitution, eventually shifted its views conditional on the new substituting firm giving an undertaking to later pay the appellant's cost owed by the respondents. The H appellant later demanded payment from the respondents regarding the unpaid professional fees, and upon their refusal to pay, obtained summary judgment against the respondents. The appellant then demanded Messrs Chellam Wong to honour the earlier undertaking but, unfortunately, the latter denied giving that I undertaking and the appellant filed a suit against them at the High Court. The High Court found for the appellant and Messrs

A Chellam Wong promptly filed an appeal against this finding. Due to interceding factors in the form of the summary judgment being set aside, Messrs Chellam Wong withdrew its own initiated appeal. But the appeal as against the setting side order of the summary judgment still was pending at the Court of Appeal. The appellant
B subsequently filed a summons-in-chambers to prevent Messrs Chellam Wong, any partner or lawyer of that firm, from representing the respondents in the current suit, for being in contravention of r. 27(a) of the Legal Profession (Practice and Etiquette) Rules 1978 ('r. 27(a)'). The High Court refused the
C application, resulting in the present appeal, in which the main issue requiring determination was whether r. 27(a) had been violated by Messrs Chellam Wong.

Held (dismissing the appeal)

D **Per Suriyadi Halim Omar JCA delivering the judgment of the court:**

(1) In regard to the factual source of this appeal *ie*, the undertaking made by Messrs Chellam Wong, the pecuniary
E interest factor, aside from the initial rejection of its existence, no objection had been raised by any party regarding its legality. As it was eventually accepted by the High Court that an undertaking had been given by Messrs Chellam Wong, there was no necessity to go behind that finding of fact. With
F the undertaking accepted by the court as having been given, the next step was to decide whether that form of pecuniary interest held by Messrs Chellam Wong justified an "order in terms" to the disqualifying application. (para 14)

(2) Due to the scope and format of r. 27(a), and unless a proper
G definition is given to its meaning, no solicitor would be able to represent anybody, as most solicitor-client relationships have a financial understanding behind them *ie*, professional fees. In a nutshell, even without the consideration of the undertaking to the appellant, and regardless of the outcome of the main
H case *vis-à-vis* the respondents and its eventual spillover effect between Messrs Chellam Wong and the appellant, there already was a pecuniary interest in existence between the former and the respondents when the appellant was substituted. If r. 27(a) were given a literal interpretation, an
I absurd result could arise. Fortified by the relevant authorities,

the situation could be remedied "by reading words in" and adopting a construction that would "promote the general legislative purpose". In this case, even though Messrs Chellam Wong had a pecuniary interest when representing the respondents, it had not contravened r. 27(a), let alone lost its professionalism and independence. In fact, there was absolutely no evidence to point toward that direction. (paras 15 & 18)

(3) The pecuniary interest here was more in line with the expectation of professional fees (and at worse having to honour the undertaking which was too premature to be discussed), rather than the pecuniary interest envisaged by r. 27(a), say, in a scenario where a beneficiary son/daughter-cum-solicitor represents the estate of the deceased in a legal tussle. In that hypothetical scenario, that advocate and solicitor has a direct pecuniary interest, as that interest which has monetary value or money's worth is tied down directly to the disputed estate and not confined to the fixed professional fee. In fact that fee, if any, plays a rather incidental role *vis-à-vis* the expected bounty in the event of a successful litigation. In the present appeal, there was neither any personal relationship nor direct pecuniary interest between Messrs Chellam Wong and the respondents (*Vijayalakshmi Devi Nadchatiram v. Saraswathy Devi Nadchatiram* (dist)). (paras 20 & 21)

(4) A solicitor may at one point of time be called upon to give a solicitor's undertaking. He might be called upon to make a distinct promise to do a particular act, or sometimes in the course of his duties eg, in a conveyancing transaction, find himself holding on to an original title, to be released only on the terms of the undertaking. Inevitably, these undertakings have fee factors attached to them; in other words, that solicitor would have a pecuniary interest over that undertaking. Following the appellant's argument in the current case, equally applicable in every case where an undertaking had been given in which an advocate and solicitor would invariably be construed as being pecuniarily interested, such an approach would bring about an absurd result. In fact, adhering to the same reasoning, as the appellant had appeared in its firm's name and was directly pecuniarily interested in the matter, it should not appear before this court as an advocate and solicitor representing the very firm in the first place. To agree

with its view would result in great reluctance by solicitors in future giving any undertaking, in order to avoid being disqualified from representing their clients later, and would witness an upsurge of applications by solicitors to be discharged in court. (para 22)

Bahasa Malaysia *translation of headnotes*

Ini adalah rayuan perayu, sebuah firma peguambela dan peguamcara, terhadap keputusan Mahkamah Tinggi kerana menolak permohonannya untuk menghalang Messrs Chellam Wong, juga sebuah firma peguambela dan peguamcara, dari bertindak dalam guaman di mana ia mempunyai kepentingan kewangan di dalamnya. Perayu pada mulanya mewakili responden-responden dalam satu guaman sivil, di mana, bagi perwakilan tersebut, responden-responden bersetuju untuk membayar fee profesional interim sebanyak RM300,000. Satu nota muktamad bertarikh 4 April 1997 untuk membayar fee profesional berjumlah RM320,868.60 kemudian telah diserah kepada perayu. Bagaimanapun, ekoran pertikaian yang berbangkit di antara mereka, perwakilan responden-responden dalam guaman tersebut telah diambil-alih oleh Messrs Chellam Wong. Perayu tidak menyenangi pertukaran perwakilan, namun akur kepada hakikat itu apabila Messrs Chellam Wong mengakujanji untuk membayar kos perayu yang terhutang oleh responden-responden. Perayu kemudian menuntut fee profesional yang belum dibayar dari responden-responden, dan memperoleh penghakiman terus apabila pihak terkemudian itu gagal membayarnya. Berikutnya, perayu menuntut supaya Messrs Chellam Wong melaksanakan akujanjinya di atas. Messrs Chellam Wong bagaimanapun menyangkal telah memberi akujanji yang didakwa, dan akibatnya perayu memfail guaman di Mahkamah Tinggi terhadap Messrs Chellam Wong. Mahkamah Tinggi memutuskan untuk perayu dan Messrs Chellam Wong memfail rayuan terhadap keputusan. Rayuan, bagaimanapun, telah ditarik balik apabila penghakiman terus diketepikan oleh mahkamah. Walaupun begitu, rayuan terhadap pengenepian penghakiman terus tersebut masih berada di Mahkamah Rayuan dan menunggu keputusan mahkamah tersebut. Perayu kemudian memfail saman dalam kamar bagi menghalang Messrs Chellam Wong, atau mana-mana rakan kongsi firma tersebut, dari mewakili guaman semasa, atas alasan ianya bertentangan dengan k. 27(a) Kaedah-Kaedah Profesion Undang-Undang (Amalan dan Etika) 1978 ('k. 27(a)').

Mahkamah Tinggi menolak permohonan, sekaligus membangkitkan rayuan di sini. Isu utama yang berbangkit adalah sama ada k. 27(a) telah dilanggari oleh Messrs Chellam Wong.

Diputuskan (menolak rayuan)

Oleh Suriyadi Halim Omar HMR menyampaikan penghakiman mahkamah:

(1) Berhubung sumber fakta rayuan ini, iaitu akujanji yang dibuat oleh Messrs Chellam Wong, yang juga merupakan faktor kepentingan kewangan, tiada bantahan dibangkitkan mengenai kesahan akujanji tersebut selain dari bantahan terhadap kewujudannya. Oleh kerana Mahkamah Tinggi telah menerima bahawa akujanji memang dibuat oleh Messrs Chellam Wong, maka tiada keperluan untuk memeriksa lanjut dapatan fakta itu. Dengan mahkamah menerima akujanji sebagai telah dibuat, langkah berikutnya adalah untuk memutuskan sama ada bentuk kepentingan kewangan seperti yang dipegang oleh Messrs Chellam Wong mewajarkan mahkamah membenarkan permohonan perayu dan memberi "perintah menurut terma".

(2) Berdasarkan skop dan format k. 27(a), dan kecuali jika suatu definasi yang sewajarnya diberikan kepada maksudnya, tiada seorangpun peguamcara boleh mewakili sesiapa, disebabkan kebanyakan hubungan peguamcara-anakguam diselimuti oleh persefahaman kewangan, iaitu persefahaman mengenai fee profesional. Tegasnya, walaupun tanpa mempertimbang akujanji yang dibuat kepada perayu, dan tanpa mengira tentang apakah keputusan kes utama *vis-à-vis* responden-responden serta kesan dan akibat yang akan menimpa Messrs Chellam Wong dan perayu, sudah wujud sutau kepentingan kewangan di antara pihak terdahulu dengan responden-responden sewaktu perayu diambil-alih. Kaedah 27(a), jika diberikan tafsiran literal, akan membangkitkan suatu kesan yang bodoh. Mengambilkira autoriti-autoriti, keadaan boleh diperbetulkan dengan cara "menokok-tambah perkataan" (by reading words in) dan menggunapakai tafsiran yang akan "mengenengahkan maksud umum undang-undang". Dalam kes semasa, walaupun Messrs Chellam Wong mempunyai kepentingan kewangan apabila mewakili responden-responden, ia tidak melanggar k. 27(a), jauh sekali dari hilang keprofesionalisma atau kebebasannya. Keterangan, pada hakikatnya, langsung tidak menunjukkan keadaan tersebut.

(3) Kepentingan kewangan di sini lebih merupai pengharapan kepada fee profesional (paling bawah pun melibatkan pengotaan akujanji yang mana terlalu pramasa untuk dibincangkan), dan bukan kepentingan kewangan seperti yang dibayangkan oleh k. 27(a), umpamanya, dalam senario di mana seorang anak lelaki/perempuan si mati yang merupakan benefisiari-cum-peguamcara mewakili estet si mati dalam pertikaian undang-undang. Dalam senario sedemikian, peguambela dan peguamcara berkenaan mempunyai kepentingan kewangan secara terus, disebabkan kepentingan yang mempunyai nilai wang itu berkait terus dengan estet yang dipertikai dan tidak terhad kepada fee profesional yang ditetapkan. Malah, jikapun fee tersebut wujud, ia hanya memain peranan yang incidental sahaja *vis-à-vis* pembayaran yang begitu banyak yang akan dibuat jika litigasi berjaya. Dalam rayuan semasa, hubungan profesional peribadi atau kepentingan kewangan secara terus tidak wujud di antara Messrs Chellam Wong dan responden-responden (*Vijayalakshmi Devi Nadchatiram v. Saraswathy Devi Nadchatiram* (dibezakan)).

(4) Seseorang peguamcara boleh pada ketika-ketika tertentu diminta untuk memberi suatu akujanji peguamcara. Ia boleh diminta untuk memberi janji khusus untuk melakukan suatu perkara, atau, kadangkala, ketika menjalankan tugasnya, umpamanya dalam transaksi conveyancing, di mana ia mungkin mendapati dirinya memegang geran hakmilik asal, yang hanya akan diserahkan atas terma-terma akujanji. Tidak dapat tidak, faktor fee atau bayaran akan dikaitkan dengan akujanji sedemikian; dengan kata lain, peguamcara tersebut mempunyai kepentingan kewangan atas terma akujanji itu. Menerima pendekatan dan hujah perayu, iaitu apabila seorang peguambela dan peguamcara memberi akujanji, maka ia tidak dapat tidak akan dianggap sebagai mempunyai kepentingan kewangan, akan hanya membawa kepada akibat yang tak masuk akal. Malah, berdasarkan kefahaman yang sama, oleh kerana perayu telah hadir atas nama firmanya dan berkepentingan kewangan secara nyata dalam guaman, maka ia tidak harus hadir di mahkamah ini sebagai seorang peguambela dan peguamcara yang mewakili firma yang tersebut itu. Jika pandangan ini diterima, maka kesannya adalah ramai pegumacara akan enggan untuk memberi akujanji di masa-masa akan datang, bagi mengelakkan diri mereka dari dihalang

mewakili klien mereka kemudiannya. Sekaligus, ia akan mengakibatkan longgokan permohonan untuk pelepasan oleh peguamcara-peguamcara di mahkamah.

Case(s) referred to:
Geoffrey Silver & Drake v. Thomas Anthony Baines [1971] 1 QB 396 ***(refd)***
Nokes v. Doncaster Amalgamated Collieries [1940] AC 1014/1022 ***(refd)***
Northman v. Barnett Council [1978] 1 WLR 221 ***(refd)***
Oriental Bank Bhd v. Abdul Razak Rouse [1986] 1 CLJ 619; [1986] CLJ (Rep) 556 HC ***(refd)***
T Damodaran v. Choe Kuan Him [1979] 2 MLJ 267 ***(refd)***
United Mining and Finance Corporation v. Becher [1910] 2 KB 296 ***(refd)***
Vijayalakshmi Devi Nadchatiram v. Saraswathy Devi Nadchatiram [2000] 4 CLJ 870 CA ***(dist)***

Legislation referred to:
Legal Profession Act 1976, ss. 77, 116
Legal Profession (Practice and Etiquette) Rules 1978, rr. 5, 27(a), 28(a), 54
Rules of the High Court 1980, O. 92 r. 4

Other source(s) referred to:
Halsbury's Laws of England, 4th edn, vol 44, para 255
Janab's Key to Criminal Procedure Evidence Advocacy and Professional Ethics, p 1146

For the appellant - Dato' Vijay Kumar (Chan Siew Cheong with him); M/s Kumar Jaspal Quah & Aishah
For the respondent - K Ramesh; M/s Chellam Wong

[Appeal from High Court, Kuala Lumpur; Civil Suit No: D3-22-1028-2001]

Reported by Suresh Nathan

JUDGMENT

Suriyadi Halim Omar JCA:

[1] This was an appeal heard by us against the High Court's decision rejecting the application of the appellant, a firm of advocates and solicitors, to disqualify Messrs Chellam Wong, also a firm of advocates and solicitors, from acting in the matter in which it had a pecuniary interest. The relevant provisions adverted to by the appellant in its submission were rr. 5, 27(a) and 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978.

[2] To understand the issue at hand, it is necessary to appreciate the facts of the case, which led to the disqualifying application. The appellant had initially represented Far Legion Sdn Bhd and Kewmoor International Limited, the current respondents, in civil suit D5-22-395-1996 against two companies called DB Trustee (M) Bhd and Mercury Industries Bhd. The respondents had agreed to an interim professional fee of RM300,000 to the appellant for that legal representation. A final note dated 4 April 1997 to pay a professional fee of RM320, 868.60 was issued later to the appellant.

[3] Due to bad blood subsequently flowing between the appellant and the respondents, a new set of lawyers represented the latter ie, Messrs Chellam Wong, for case D5-22-395-1996. The appellant was unhappy with its substitution, and had made its feelings known but eventually shifted its views. Rule 54 of the Legal Profession (Practice and Etiquette) Rules 1978 permits substitution as it states that an advocate and solicitor, knowing that the other party is represented by another advocate and solicitor, shall not act for him unless there is prior consent from the other advocate and solicitor. Ravi Nekoo in Professional Practice (MLJ) at p. 152 had also succinctly said:

> Where consent is not obtained, the new solicitor may still take conduct of the matter upon being satisfied that the professional remuneration of the present advocate and solicitor has been paid. **Alternatively, the new solicitor may undertake to pay the professional remuneration of the present advocate and solicitor** (emphasis supplied)

[4] Such giving of undertaking is quite normal in a solicitor's world, as situations will arise where solicitors will be called upon to give the solicitors' undertakings, normally to be accepted by their colleagues. The regime of trust that permeates this profession is the cornerstone of the acceptability of such undertaking. Its enforceability on the other hand must depend on certain prerequisites, eg, that undertaking must be given by the solicitor in the capacity as a solicitor (*United Mining and Finance Corporation v. Becher* [1910] 2 KB 296; *T. Damodaran v. Choe Kuan Him* [1979] 2 MLJ 267; *Oriental Bank Bhd v. Abdul Razak Rouse* [1986] 1 CLJ 619; [1986] CLJ (Rep) 556). It must be clear, unambiguous and unequivocal (*Geoffrey Silver & Drake v. Thomas Anthony Baines* [1971] 1 QB 396). Once that undertaking is

established as good, even if the client were to die, or the solicitor ordered not to comply with it, or even if the solicitor's firm were replaced, unless waived it is enforceable. *Halsbury's Laws of England* (4th edn) Vol 44 at para. 255 had authored:

> **Enforcement of undertakings.** Where a solicitor who is acting professionally for a client gives his personal undertaking in that character to the client or to a third person, or gives an undertaking to the court in the course of proceedings, that undertaking may be enforced summarily upon application to the court. Before this remedy can be pursued it must be shown that the undertaking is given by the solicitor personally, and not merely as agent on behalf of his client. The undertaking must also be given by the solicitor, not as an individual, but in his professional capacity as a solicitor …
>
> The undertaking given by the solicitor will be enforced against the solicitor even though, after it is given, the client dies or instructs the solicitor not to perform it, or changes his solicitor. If performance of the undertaking has been waived the undertaking will not be enforced afterwards.

[5] The appellant here had eventually agreed to the substitution conditional on this new substituting firm giving an undertaking to pay the appellant's cost owed by the respondent later.

[6] The appellant later had demanded payment from the respondents regarding the unpaid professional fees. As the respondents had refused to pay despite repeated demands a suit was filed against them. In their defence the respondents had responded by denying the alleged promised 4 April 1997 note, and even if it existed, was excessive. A judgment in default was obtained against the second respondent for want of appearance on 20 August 2001. A successful summary judgment was also subsequently obtained against the 1st respondent for the sum of RM300,000 as professional fees, RM15,000 as service tax, RM5,868.60 as disbursements, 8% interest on the sum of RM320,868 and costs of RM350 on 17 January 2002. In a nutshell the summary judgment obtained for professional fees was RM320,868.60 basically founded on that 4 April 1997 note.

[7] After the appellant had successfully obtained summary judgment for that owed professional fee it demanded Messrs Chellam Wong to honour that earlier undertaking. Unfortunately the latter denied giving that undertaking and a suit was filed by the appellant against them at the High Court, Kuala Lumpur (Suit

No D4-22-937-2002) for its recovery. This denial stance was taken up despite a letter dated 1 November 2000 having been sent to the appellant that read, "We hereby give our undertaking to pay your legal fees upon taxation of your bill". After the latter suit was heard, and also agreed by both parties, the High Court had held that an undertaking indeed was given to the appellant by Messrs Chellam Wong. An appeal was promptly filed by the latter as regards this finding. Due to interceding factors in the form of the summary judgment being set aside Messrs Chellam Wong's had withdrawn its own initiated appeal. But the appeal as against the setting aside order of the summary judgment still is pending at the Court of Appeal.

[8] On 20 November 2002 the appellant had filed a summons in chambers to prevent Messrs Chellam Wong, any partner or any lawyer of that firm, from representing the respondents in the current suit, for being in contravention of r. 27(a) of the Legal Profession (Practice and Etiquette) Rules 1978 and or under O. 92 r. 4 Rules of the High Court 1980 (hereinafter referred to as 'the disqualifying application'). Having perused the submission of the appellant's submission, the factual grounds of the disqualifying application, though not too clear, could be condensed in this way:

> Even though the disqualifying application speaks of preventing Messrs Chellam Wong from representing the respondents in civil suit D3-22-1028-2001, recent events have narrowed the scope, justified by identifiable set of facts. There is an appeal pending at the Court of Appeal pertaining to the setting aside of the summary judgment by the High Court which will have some financial implication. If the appeal is dismissed, and the court order maintained, Messrs Chellam Wong pays nothing to the appellant, whilst with the restoration of the summary judgment the latter will be liable to satisfy the professional fee judgment, ordered against the respondents. Surely, according to the appellant, the integrity of Messrs Chellam Wong would be compromised. This is the 'conflict of interest' picture painted by the appellants, which will beset Messrs Chellam Wong, by virtue of that direct pecuniary interest in the outcome of the appeal, and at the same time physically representing the respondents during the hearing.

[9] From the above set of facts can the court safely conclude that r. 27(a) made by the Bar Council, in exercise of the powers conferred by s. 77 of the Legal Profession Act 1976, had been violated by Messrs Chellam Wong? This section reads:

(1) Without prejudice to any other power to make rules provided under this Act, the Bar Council may, with the approval of the Attorney General make rules for regulating the professional practice, etiquette, conduct and discipline of advocates and solicitors.

(2) Any rules made pursuant to this section shall not come into operation until they have been published in the Gazette.

(3) Any advocate and solicitor who fail to comply with any rules made under this section may be liable to disciplinary proceedings.

(4) The Attorney General may, by order published in the Gazette, make such modifications as he deems necessary to any rules made and published under this section before the coming into operation of this subsection.

[10] This provision of s. 77 empowers the promulgation of rules pertaining to the professional practice, etiquette, conduct and discipline of advocates and solicitors. The coverage recognizes the necessity of such rules and to punish accordingly any recalcitrant advocate and solicitor who fails to comply with them. Needless to say the ethical standard legislated by the Legal Profession Act confirms the privileged position of the legal profession. The need to lay down the standard of the moral principles and guidelines is to ensure that that privileged position is not abused (*Janab's Key to Criminal Procedure Evidence Advocacy and Professional Ethics* p. 1146).

[11] The immediate relevant rules under scrutiny now are:

Rule 5:

No advocate and solicitor to accept brief if difficult to maintain professional independence

(a) No advocate and solicitor shall accept a brief if such acceptance renders or would render it difficult for him to maintain his professional independence or is incompatible with the best interest of the administration of justice.

(b) ....

Rule 27(a)

Advocate and solicitor not to appear where pecuniarily interested

A (a) An advocate and solicitor shall not appear in any matter in which he is directly pecuniarily interested

(b) ...

Rule 28(a)

B

Advocate and solicitor not to appear in a case where he is a witness

(a) An advocate and solicitor shall not appear in Court or in Chambers in any case in which he has reason to believe that
C he will be a witness in respect of a material and disputed question of fact, and if while appearing in a case it becomes apparent that he will be such a witness, he shall not continue to appear if he can retire without jeopardizing his client's interests.

D **[12]** These 3 rules have been reproduced as they were the relevant provisions upon which the disqualification application was founded on as per the appellant's written submission. I was hard pressed to appreciate the importation of rr. 5 and 28 in that submission as that disqualifying application was confined only to
E r. 27(a) Legal Profession (Practice and Etiquette) Rules 1978 and/ or O. 92 r. 4 of the Rules of the High Court 1980. I now reproduce the relevant portions of the appellant's submission and summons-in chambers to reflect the above statement:

F Relevant portion of the written submission:

This is an appeal against the High Court Judge's decision not to disqualify Messrs Chellam Wong from acting in the matter. Your Appellant/Plaintiff states that Messrs Chellam Wong has a pecuniary interest in the outcome of the matter and hence should
G have been disqualified pursuant to Rule 5(a), 27(a) and 28 (a) of the Legal Profession (Practice and Etiquette) Rules 1978. This 'pecuniary interest' still continues as the matter is still pending before this Honorable Court.

H Relevant portion of the disqualifying application:

Firma guaman Tetuan Chellam Wong dan/atau rakan-rakan kongsi nya dan/atau peguam-peguam dalam firma tersebut, dihalang dari bertindak bagi pihak Defendan Pertama dan Defendan Kedua dalam tindakan ini kerana melanggari Kaedah 27 'Legal Profession
I (Practice and Etiquette) Rules 1978' dan/atau di bawah Aturan 92 kaedah 4 Kaedah-kaedah Mahkamah Tinggi 1980;

[13] I could easily have disposed off the issues of rr. 5 and 28, not just on the premise that they were not pleaded in the application but it was never seriously ventilated. I was unable to find anywhere in the appellant's written submission that bespoke of Messrs Chellam Wong having been denied of its professional independence, or had detracted from acting in the best interest of justice, or would be called as a witness except for mere mention of those unpleaded provisions. The emphasis was on the contravention of r. 27(a) of the Legal Profession (Practice and Etiquette) Rules 1978 by Messrs Chellam Wong.

[14] Returning to the factual source of this appeal ie, the undertaking made by Messrs Chellam Wong, the pecuniary interest factor, aside from the initial rejection of its existence, no objection had been raised by any party regarding its legality. As it was eventually accepted by the High Court that an undertaking had been given by Messrs Chellam Wong there is thus no necessity for us to go behind that finding of fact. With the undertaking accepted by the court as having been given, the next step is to decide whether that form of pecuniary interest held by Messrs Chellam Wong justified an 'order in terms' to the disqualifying application.

[15] Due to the scope and format of r. 27(a), and unless a proper definition is given to its meaning, no solicitor will be able to represent anybody, as most solicitor-client relationship has a financial understanding behind it ie, professional fees. Professional fees to be charged will depend on many factors *inter alia*, time, labour and skilled required, novelty and difficulty of questions involved, the amount of controversy etc (r. 11). Under s. 116 of the Legal Profession Act 1976 (166), an advocate and solicitor may even make an agreement in writing with his client, in respect of the amount and manner of the payment in respect of contentious business done. In a nutshell, even without the consideration of the undertaking to the appellant, and regardless of the outcome of the main case *vis-à-vis* the respondents and its eventual spillover effect between Messrs Chellam Wong and the appellant, there already was a pecuniary interest in existence between the former and the respondents when the appellant was substituted.

[16] With r. 27(a) now giving "an appearance of inconsistency" with, say, r. 11 or s. 116 of Act 166, a purposive interpretation must be given in the circumstances of the case that does not detract from the spirit of the Legal Profession (Practice and Etiquette) Rules 1978 and intention of Parliament. It is understood that the Legal Profession (Practice and Etiquette) Rules 1978 was formulated to regulate the conduct of the legal profession, and to ensure that good legal ethics are abound in this profession, and not unwittingly to kill off this honourable profession. Unless a purposive interpretation is given bizarre and absurd results could ensue. Maxwell in Interpretation of Statutes had occasion to quote the following passage from *Nokes v. Doncaster Amalgamated Collieries* [1940] AC 1014/1022:

> The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. We must not shrink from an interpretation which will reverse the previous law; for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or, conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. *At the same time, if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result* (emphasis added).

[17] When discussing the golden rule of interpretation in *Interpretation of Statute (Bindra's)* the writer also had occasion to state at p. 93:

> 1. Golden Rule: *Warburton*'s case; *Becke v. Smith* – Burton J in *Warburton v. Loveland*, observed: I apprehend it is a rule in the construction of statutes, that, in the first instance, the grammatical sense of the word is to be adhered to. *If that is contrary to, or inconsistent with any expressed intention, or declared purpose of the statute, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified,* extended, or abridged so far as to avoid such inconvenience, but no further. …

Parke, B., in *Becke v. Smith* formulated the following well-known rule for the interpretation of statutes:

> Another version of Golden Rule. *It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the Legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further* (emphasis added).

[18] As stated much earlier if r. 27(a) were given a literal interpretation an absurd result could arise. Fortified by the above authorities I therefore remedy the situation "by reading words in" and adopt a construction that will 'promote the general legislative purpose' (*Northman v. Barnett Council* [1978] 1 WLR 221, per Lord Denning). In this case even though Messrs Chellam Wong has a pecuniary interest when representing the respondents, I am not convinced that Messrs Chellam Wong had contravened that provision, let alone lost its professionalism and independence. In fact there is absolutely no evidence to point towards any of those directions.

[19] As r. 5 had been mentioned in the written submission, and for the sake of completeness, a possible scenario that needs to be avoided by its promulgation is as follows: A solicitor prepares the pleadings for one party and then prepares the defence of the other party, or a case of a firm of lawyers representing the vendor and purchaser simultaneously (unless with prior written consent). This scenario certainly does not exist in the current appeal.

[20] The pecuniary interest here was more in line with the expectation of professional fees (and at worse having to honour the undertaking which is too premature to be discussed), rather than the pecuniary interest envisaged by r. 27(a), say, in a scenario where a beneficiary son/daughter-cum-solicitor represents the estate of the deceased in a legal tussle. In that hypothetical scenario that advocate and solicitor has a direct pecuniary interest, as that interest which has monetary value or money's worth is tied down directly to the disputed estate and not confined to the fixed professional fee. In fact that fee, if any, plays a rather incidental role *vis-à-vis* the expected bounty in the event of a successful litigation. A case that comes to mind that could throw some light

on this ongoing issue is the case of *Vijayalakshmi Devi Nadchatiram v. Saraswathy Devi Nadchatiram* ([2000] 4 CLJ 870). The facts of this case are as follows:

> In the originating summons, the appellant (plaintiff) had prayed that the respondent be prohibited from acting as the advocate and solicitor for her brother, sister and niece in various pending civil actions pursuant to rules 3(a) (b)(ii) and 27 Legal Profession (Practice and Etiquette) Rules 1978 ("LPR 1978"). Counsel for the appellant submitted *inter alia* that the respondent ought to be barred from so acting by reason of embarrassment as the respondent was personally related to the parties in those civil actions. Furthermore, it was contended that the respondent had a pecuniary interest in certain disputed subject matters since she was named as a beneficiary. The trial judge allowed the application. The matter went to the Court of Appeal where the court allowed the respondent's appeal. The appellant then appealed to the Federal Court. The issue raised for consideration was whether the Court of Appeal was correct in law in their interpretation of the proper construction of rules 3 and 27(a) of the LPR 1978.

[21] In that case the Federal Court had held that the respondent by reason of r. 27(a), was prohibited from acting for her client, in view of the personal relationship and of her pecuniary interest over the matter there. Needless to say the facts of the above case are distinguishable to the current appeal as neither is there any personal relationship nor direct pecuniary interest between Messrs Chellam Wong and the respondents.

[22] As mentioned above, a solicitor may at one point of time be called upon to give the solicitor's undertaking. He might be called upon to make a distinct promise to do a particular act, or sometimes in the course of its duties, eg, in a conveyancing transaction, find himself holding on to an original title, to be released only on the terms of the undertaking. Inevitably too these undertakings have fee factors attached to them. In other words that solicitor would have a pecuniary interest over that undertaking. Following the argument of the appellant in the current case, equally applicable in every case where an undertaking had been given, in which an advocate and solicitor would invariably be construed as being pecuniarily interested, such an approach would bring about absurd results. In fact adhering to the same reasoning, as the appellant had appeared in its firm's name, and is directly pecuniarily interested in the matter it should

not appear before us as an advocate and solicitor representing the very firm in the first place. To agree with its view would result in great reluctance by solicitors in future to give any undertaking, in order to avoid being disqualified from representing their clients later, let alone witness an upsurge of applications by solicitors to be discharged in court.

[23] We must assume that the appellant had abandoned O. 92 r. 4 Rules of the High Court 1980, as part of its argument, as no mention of it was made in the course of the appeal. On all the above grounds we therefore would dismiss this appeal with costs and order that the deposit be remitted to the respondent towards the account of taxed costs.